

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 September 28, 2023

17 10:01 AM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re Hybrid Hearing on CEL Token Legal Issues (To The
2 Extent a CEL Token Resolution Event Has Not Occurred) .
3 (Doc. ## 3356, 3360, 3412, 3431, 3432, 3433 to 3436, 3476,
4 3528) .

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25 Transcribed by: Sonya Ledanski Hyde

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7 ALSO PRESENT:

8 JASMINE ARMAND

9 DEAN LINDSAY CHAPMAN

10 CHRISTOPHER J. COCO

11 THOMAS DIFIORE

12 SCOTT DUFFY

13 SEAN ANDREW FEENER

14 MIRA HAQQANI

15 SAMUEL P. HERSHEY

16 JEFFREY S. KRAMER

17 NICHOLAS R. LOMBARDI

18 KEITH NOYES

19 CAITLIN O'CONNELL

20 GREGORY F. PESCE

21 MARK ROBINSON

22 ELIZABETH D. SCOTT

23 MICHAEL STANLEY

24 DAVID TURETSKY

25 CAROLINE WARREN

1 KEITH WOFFORD
2 ANDREW YOON
3 TANZILA ZOMO
4 UDAY GORREPATI
5 TAYLOR HARRISON
6 JEREMY HILL
7 MIKE LEGGE
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1 P R O C E E D I N G S

2 THE COURT: Good morning. Everybody please be
3 seated. All right. We're here in Celsius 22-10964.

4 Mr. Koenig, good morning.

5 MR. KOENIG: good morning, Your Honor. For the
6 record, Chris Koenig, Kirkland & Ellis, for the Debtors.

7 Your Honor, you know the case number by heart.

8 Your Honor, this status conference was initially
9 scheduled as an argument on the legal issues for CEL token
10 in the event that we did not have a settlement with the CEL
11 token holders. As a reminder, our Chapter 11 plan includes
12 a settlement for CEL token that values the token at 25 cents
13 per CEL token.

14 At the disclosure statement hearing, you asked me
15 who is the counterparty to the settlement. And I said,
16 well, we're going to wait and see. We're going to see what
17 creditors say about the plan. And as I'm sure Your Honor
18 saw, we filed the voting report on Monday. The results were
19 overwhelming. And if I can be candid, exceeded our wildest
20 hopes and expectations.

21 Just a couple of numbers for the record. All
22 accountholder classes entitled to vote voted to accept the
23 plan by a very large margin. In the Earn class, which is
24 our largest class of creditors, over \$2.4 billion in dollar
25 amount voted on the plan out of a total of about \$4.2

1 billion total of Earn creditors. And of those voting, more
2 than 99 percent by both number and dollar amount voted to
3 accept the plan. The same holds true for the other
4 accountholder Classes. In all of those, over 98 percent in
5 number and 96 percent in dollar amount except for withhold,
6 where one large no vote in a small class brought the dollar
7 amount down a bit.

8 And that level of support continued for CEL token
9 holders, too. We separately examined ballots of CEL token
10 holders and ran the calculations as if they were a separate
11 class. With almost 37,000 CEL token holders submitting
12 ballots, 482 voted no. that's an acceptance rate of 98.71
13 percent by number. We believe that the process worked as
14 intended. The CEL token settlement was an open offer to CEL
15 token holders, and the CEL token holders accepted that
16 offer.

17 As we disclosed at the prior discovery conference
18 on this topic, we signed two formal settlement agreements
19 with Mr. (indiscernible) and Mr. Wiles, who are two of the
20 very large CEL token holders who have been litigating this
21 issue throughout these cases.

22 The lack of objections to the plan bear this out,
23 too. There was one formal objection that was filed by Mr.
24 Otis Davis. There was one letter that was submitted. This
25 is in stark contrast to the dozens of letters that Your

1 Honor received on this topic in the past.

2 So our position is that the CEL token settlement
3 has been overwhelmingly accepted as part of the plan and the
4 CEL token settlement should be approved as part of
5 confirmation next week. That's how Chapter 11 plans work.
6 Creditors have the right to vote on their treatment, and
7 dissenting creditors get dragged along. Unanimity is not
8 required.

9 THE COURT: Let me ask a couple of questions.

10 MR. KOENIG: Sure.

11 THE COURT: So not everybody has signed on the
12 settlement.

13 MR. KOENIG: Sure.

14 THE COURT: Can 9019 settlement bind non-settling
15 -- people who have not agreed to settle?

16 MR. KOENIG: I think if we file this as a separate
17 9019 motion, that might be challenging. But this is a
18 Chapter 11 --

19 THE COURT: Let me just go through a series of
20 questions.

21 MR. KOENIG: I understand.

22 THE COURT: But you agree that in terms of the
23 9019, only those parties who have agreed are bound by this
24 settlement per say.

25 MR. KOENIG: Pursuant to Bankruptcy Rule 9019, I

1 agree.

2 THE COURT: Okay. The plan proposes a treatment
3 of 25 cents for CEL token holders, correct?

4 MR. KOENIG: Yes, Your Honor.

5 THE COURT: All right. There is no single class
6 of CEL token holders. They are spread among a number of
7 classes, of accepting classes.

8 MR. KOENIG: Yes.

9 THE COURT: So it is the issue of -- become
10 whether to the extent they object, for dissenting members of
11 an accepting class, the question then becomes the best
12 interest test; are they receiving at least as much as they
13 would in a Chapter 7 liquidation. Is that about the
14 analysis?

15 MR. KOENIG: I think that's right, Your Honor.

16 THE COURT: Because I sort of went back and forth
17 in my own mind. And I haven't read the entire trial brief.
18 I did look at parts of it last night. And I specifically
19 looked at the CEL token portions of it. And it doesn't
20 address this analysis.

21 So if I had a case where it didn't specifically
22 deal with the treatment of CEL tokens, the issue would then
23 become it seems to me in the claim objection process. You
24 know, they filed claims and there's a contested matter
25 whether CEL tokens are worth zero, 25 cents, eight dollars,

1 you pick a number. And that would be resolved as part of a
2 claims resolution process. But just to kind of work this
3 through in my mind, that doesn't seem to apply here because
4 the plan proposes the treatment of 25 cents. And therefore,
5 we fall into this best interest analysis. If they object --
6 okay, who has the burden in the best interest analysis?

7 MR. KOENIG: The debtors. I believe the debtor
8 has the burden by a preponderance of the evidence.

9 THE COURT: So I read -- again, not every page,
10 but I looked at the expert the committee submitted, the
11 report on CEL tokens. And maybe I missed something, but
12 what I derived from that is the expert doesn't believe it's
13 81 cents, but doesn't say what it is.

14 He's putting on evidence -- and I haven't made my
15 mind up -- this is the analysis that the Court has to make.
16 Okay. So assume for those dissenting class members who
17 argue that the CEL token is worth more than 25 cents, what
18 does the Court have to conclude? That the value of the CEL
19 token does not exceed 25 cents. Is that a sufficient
20 finding? I'm not saying that's -- okay. I'm just thinking
21 out loud. Okay? Because -- so with respect to the CEL
22 token, there are many issues. Is it a security? If it's a
23 security, it's subordinated under 510. If it's
24 subordinated, value zero. If it's not a security, what's
25 the value of it?

1 Assuming that the objectors carry forward with
2 objections, they're absolutely entitled to.

3 MR. KOENIG: Of course.

4 THE COURT: I'm just trying to understand what is
5 it I'm going to hear. Because the only written expert
6 report that I've seen so far says it's not 81 cents. Have I
7 missed something?

8 MR. KOENIG: Your Honor, it's the committee's
9 experts -- I'll let Mr. Colodny speak, but I don't believe
10 that the expert report says it's 20 cents or 25 cents or
11 anything other than it's not 81.

12 THE COURT: It says it's not 81 -- I looked. That
13 was one of the things I was interested in seeing, what does
14 the expert say.

15 MR. KOENIG: Right.

16 THE COURT: And he said it's not 81 cents.

17 MR. KOENIG: Right. I think, Your Honor, the
18 standard would be for best interest whether the proper value
19 of CEL token under a Chapter 7 liquidation would be higher
20 than the value that is being given to CEL token holders
21 under our plan.

22 THE COURT: I said the reverse. Basically is it -
23 - does the court find based on the evidence presented that
24 the value of the CEL token is equal to or less than 25
25 cents. Because that's the treatment that's proposed in the

1 plan.

2 MR. KOENIG: Right. And I think it could even be,
3 depending on the math -- and lawyer math is admittedly
4 challenging. But as long as the plan will provide higher
5 recovery for all creditors than under Chapter 7, that's our
6 burden, that's what we'll show generally. But if there are
7 more proceeds to go out to creditors under a Chapter 11
8 plan, the math could work out such that CEL token could be
9 worth 30 cents and you still pass best interest because the
10 margin between the Chapter 11 plan distributions and the
11 Chapter 7 distributions are so high that that margin
12 actually -- there's a little bit of margin for error.

13 THE COURT: So I searched the brief and I didn't
14 see anything in the brief that deals with the issue. I
15 realize that we're probably dealing with a -- I don't know
16 how many people we're dealing with who didn't join the
17 settlement.

18 MR. KOENIG: Right. And we have the burden to
19 demonstrate at confirmation.

20 THE COURT: Is somebody going to put on something
21 in the -- so, look, on the issue is it a security, one of
22 the conclusions, I've read both Ripple and Terraform. You
23 know, Judge Torres' Decision in Ripple, Judge Rakoff's
24 decision in Terraform. It seems to me different cases,
25 different CEL property -- not a capital C-E-L. Crypto.

1 Different crypto. Different conclusions as to what's a
2 security and what's not.

3 So if based on the evidence presented the Court
4 concludes that the value of the CEL token is less than 25
5 cents, I don't think I have to resolve the issue of whether
6 it's a security or not. The question is do I need to
7 resolve the issue. I'm not (indiscernible) to decide
8 issues, but if I decide the issue, it's an appellate issue.
9 But it seems to me that I don't have -- if the evidence is
10 such that the Court concludes the value is less than 25
11 cents, I don't have to resolve the issue of whether it's a
12 security. Those are my -- I'm ruminating about this. I
13 haven't resolved how to deal with it, but that's -- I wanted
14 to get reactions from anybody on Zoom or in the courtroom
15 today.

16 MR. KOENIG: Right. Thank you, Your Honor. And
17 we appreciate it. I mean, obviously a trial about whether
18 or not CEL is a security could be a lengthy trial. And I
19 know Ms. Scheuer from the SEC is here, and there are a lot
20 of folks that might be interested in what that decision is.
21 And we're trying to get out of bankruptcy first and
22 foremost.

23 THE COURT: I understand.

24 MR. KOENIG: And so if there's a way for us to
25 resolve the matter in a way that doesn't lead to a

1 contested, expensive, drawn-out appellate process, we would
2 like to do that. So we appreciate the guidance. We'll
3 certainly --

4 THE COURT: I'm asking questions. I'm looking --
5 I didn't see a roadmap presented in what briefs I've looked
6 at so far.

7 MR. KOENIG: Well, that is helpful feedback for us
8 to consider in advance of next week, Your Honor.

9 THE COURT: So Mr. Colodny is -- if your witness
10 testifies and one of the pro se creditors or a represented
11 creditor or the court asks the question do you have an
12 opinion what the value of the CEL token was at the petition
13 date, is the witness going to answer that?

14 MR. COLODNY: Your Honor, Aaron Colodny from White
15 & Case on behalf of the Official Committee of Unsecured
16 Creditors.

17 You are correct, we did not put a value and our
18 expert did not opine on the value of CEL token. What he
19 opined on was that the value is less than 81 cents, and much
20 less than 81 cents. The issue that we have, which I think
21 is uncontroverted, is that prior to the petition date,
22 significant manipulation of the CEL token price --

23 THE COURT: Okay. Let's assume I find -- I
24 understand the arguments about manipulation, indictment of
25 Mashinsky, the whole -- I think I understand that.

1 MR. COLODNY: Correct.

2 THE COURT: But then the question still may come
3 down to -- let's assume -- again, assumption, not making any
4 finding. Let's assume that I find that 81 cents is not the
5 value of the CEL token, is not satisfactory evidence of the
6 value of the CEL token at the petition date. Well, what is
7 it?

8 MR. COLODNY: So I think you can get to your best
9 interest question and in a number of different ways. I
10 think Mr. Koenig pointed out one. You can assume that the
11 price is 81 cents. And if the liquidation value of the
12 debtors would provide CEL token claims with more value than
13 if the token was 81 cents, then the best interest test is
14 satisfied.

15 In addition, if Your Honor found that the value of
16 the CEL token was less than 25 cents, it would be satisfied
17 (indiscernible) because you could not give -- we're not
18 giving a hundred percent back to everybody.

19 THE COURT: I just want to say I didn't -- maybe
20 because I hadn't thought about it before, I didn't
21 completely follow how the best interest test is satisfied if
22 the value was 81 cents at the petition date. I know you
23 went through it very quickly, and I'm not sure I was
24 completely tuned into it.

25 MR. COLODNY: So the way that I as thinking about

1 it, Your Honor, is if you assume that the value of the CEL
2 token is 81 cents and assuming a claim at 81 cents under a
3 Chapter 7 liquidation, a creditor would get back say five
4 dollars. But under the 25 cent settlement in our plan, they
5 would get back seven. Then the best interest plan test
6 would be satisfied.

7 THE COURT: So if your expert is asked the
8 question during the confirmation hearing, do you have an
9 opinion as to the value of the CEL token at the petition
10 date. Is the Court going to get an answer to that question?

11 MR. COLODNY: In our expert's report, he opines
12 that the value is less than 81 cents. He does not provide a
13 specific value to the CEL token.

14 THE COURT: I didn't read every page of it, but I
15 did look for does he have an opinion as to the value of it.
16 And the only opinion I saw was it's less than 81 cents.

17 MR. COLODNY: That's correct.

18 THE COURT: But my question to you is if he's
19 asked on cross-examination do you have an opinion as to the
20 value of the CEL token on the petition date, is he going to
21 have an answer?

22 MR. COLODNY: I'm not sure that I should be
23 testifying for my witness, Your Honor.

24 THE COURT: I'm not -- he's your witness. I just
25 -- I'm not asking what his opinion is. Is he going to have

1 an opinion as to the value of the CEL token on the petition
2 date?

3 MR. COLODNY: Right. And the problem I'm having,
4 Your Honor, is I am not my witness. And so to --

5 THE COURT: Okay. Better find out the answer.

6 MR. COLODNY: I understand, Your Honor. What I'll
7 say, Your Honor, is in his expert report, he does not opine
8 as to the value of the CEL token.

9 THE COURT: I know that. That much I got. I
10 looked carefully. Because I was running through this
11 analysis in my head where people who didn't join the
12 settlement aren't bound. The plan treatment is 25 cents.
13 They are dissenting members of a bunch of different classes.
14 The best interest test has to be satisfied. And that raised
15 the question maybe you have multiple loops to get there.
16 But the question to me naturally followed if they're getting
17 25 cents, what would they get in a Chapter 7.

18 MR. COLODNY: Understood, Your Honor.

19 THE COURT: That could vary by -- is it a
20 security? They get zero because it's subordinated. It's
21 not a security, what do they get.

22 MR. COLODNY: Right, Your Honor. I think that's
23 one of the points that I wanted to raise today, is how I
24 view it, there are four different arguments that you could
25 get to zero. And CEL token holders would have to win all of

1 them to get to something more.

2 First, what is CEL token? Is it a debt
3 instrument? Is it equity? If it's equity, then the answer
4 would be zero.

5 Second, if it's a security and subordinated under
6 510(b), it would also be zero or be subordinated to the
7 value of unsecured claims --

8 THE COURT: My guess -- and I'm not anxious to
9 decide whether it's a security or not one way or the other -
10 -

11 MR. COLODNY: Reading the room, I understand that.

12 THE COURT: -- one way or the other.

13 MR. COLODNY: Correct. Third, does it have any
14 value since on the petition date Celsius ceased to exist.
15 And CEL token, when I think about CEL token, there is no
16 payment obligation. There is no inherent right of anyone
17 that holds CEL token to any value from Celsius.

18 THE COURT: For native tokens of an insolvent --
19 whatever, exchange, lending platform, whatever -- but for a
20 native token with company that's not going to have ongoing
21 business, one could say it can't have any value.

22 MR. COLODNY: Correct. Because --

23 THE COURT: Whether it's a security or a
24 commodity, it's an it. But if Celsius' business doesn't
25 exist anymore, how can it have any value other than people

1 who want to manipulate the price.

2 MR. COLODNY: Correct. And then the third is the
3 market price -- or the fourth, excuse me, is the market
4 price, Your Honor. And whether that market price was an
5 accurate indication of that.

6 THE COURT: Let's assume I find it's not an
7 accurate -- what is it -- is it 80 cents instead of 81? Is
8 it 75? Let's take it all the way down.

9 MR. COLODNY: Right. And I think --

10 THE COURT: Am I going to hear evidence about
11 that?

12 MR. COLODNY: Your Honor hit the nail on the head
13 where you said if it's less than 25, then there's no issue.
14 And here, one of the things that we have is we have an
15 overwhelming amount of affected parties on both sides saying
16 we accept 25. We have 96 percent --

17 THE COURT: They do. But people who didn't join
18 the settlement don't.

19 MR. COLODNY: Correct. But if I were to ask the
20 market is 25 cents a correct price, you now have 98 percent
21 of CEL token holder saying --

22 THE COURT: No, you have 98 percent saying enough
23 is enough and we'll take the 25 cents.

24 MR. COLODNY: You have 98 percent voting in favor
25 of a plan that treats CEL token as 25 cents.

1 THE COURT: Okay. But the 98 percent can't bind
2 objectors -- you know, dissenting members of a class.

3 MR. COLODNY: Understood, Your Honor. You also
4 have 96 percent of all other creditors who are diluted by
5 that saying we accept this as well --

6 THE COURT: And they still can't find -- you still
7 -- if I'm wrong, tell me. Because none of the -- I haven't
8 seen any briefs that raise this issue. But in my mind, it
9 then became an issue of dissenting creditors have to receive
10 at least as much as they would in a Chapter 7 liquidation,
11 the best interest test. Okay. So -- and if -- I take it
12 you're acknowledging that it's the Debtor's burden, the
13 committee pushing this burden to establish that the best
14 interest test is satisfied.

15 MR. COLODNY: Correct.

16 THE COURT: Okay. Are you going to tell me how
17 you're going to do that?

18 MR. COLODNY: Your Honor --

19 THE COURT: Between now and Monday?

20 MR. COLODNY: I guess my point, Your Honor --

21 THE COURT: Just that I entered an order this
22 morning. We're starting the evidence on Tuesday morning.
23 We're going to deal with -- we'll deal with opening
24 statements and I want to raise another issue that I want
25 addressed that I alluded to in the order that was entered a

1 little while ago.

2 MR. COLODNY: I guess my point, Your Honor, is
3 that the value of CEL, it's not as if this is a manipulation
4 case where we can look back and say a month ago, two months
5 ago there was no manipulation and we're going to look at
6 that price. We've got a token that was heavily manipulated
7 throughout its history. And that started at the very
8 beginning.

9 THE COURT: At the (indiscernible) it was, what,
10 20 cents?

11 MR. COLODNY: (indiscernible) it was 28 cents I
12 believe under Mr. (indiscernible) calculation.

13 THE COURT: Okay. I don't (indiscernible).

14 MR. COLODNY: But even then, Your Honor --

15 THE COURT: But I want to make sure that you
16 understood that the -- I'm not sure -- I'll listen to
17 anybody who wants to talk during the hearing about, well,
18 don't approve the settlement, Judge. But let's assume I
19 approve the settlement. What amount, how am I going to deal
20 with the dissenting members of -- and I appreciate the fact
21 that you -- while there was no separate class, you did --
22 the voting results do break out, look at the CEL
23 (indiscernible) overwhelmingly, but not a hundred percent.

24 MR. COLODNY: That's right, Your Honor.

25 THE COURT: You know, I mean, I could certainly

1 envision a witness, expect witness testifying assuming I've
2 been asked to assume that it's a security and I've been
3 advised about 510(a), assuming those issues, the value is
4 zero. Okay. I've been asked to assume that it's not a
5 security. And in that scenario -- if one of the other
6 creditors hasn't asked about it, I'm going to ask about it.
7 Do you have an opinion as to the value -- assuming it wasn't
8 the security, do you have an opinion as to the value -- I
9 guess it wouldn't really matter if it was a security or not
10 -- do you have an opinion as to the value of the CEL token
11 on the petition date? You know, whatever the value is. If
12 it was a security, the law arguably demands a different
13 result.

14 Let me stop there. I wanted to make sure I got
15 out -- and look, if you all disagree with this sort of
16 mental gymnastics I've been going through trying to figure
17 out how am I supposed to deal with dissenting members of the
18 class. And I do -- and look, and it may be that somebody is
19 going to try and persuade me this is not an issue of the
20 best interest test, this is an issue of the claims allowance
21 process. It struck me not if the plan proposes the
22 following treatment and the plan is adopted, that pushes you
23 back to the best interest test. I don't know the difference
24 -- okay. Anything else you want to say?

25 MR. COLODNY: No, Your Honor.

1 THE COURT: Okay. Does anybody else want to be
2 heard?

3 UNIDENTIFIED SPEAKER: (indiscernible).

4 THE COURT: Hold on. We have somebody else in the
5 courtroom. And then I will hear anybody on Zoom. But let
6 me finish with the people in the courtroom. Okay? Go
7 ahead.

8 MS. SCHEUER: Thank you, Your Honor. Good
9 morning. For the record, Therese Scheuer for the U.S.
10 Securities and Exchange Commission. With me on the line
11 through Zoom is my colleague, Matthew Uptegrove, also from
12 the U.S. Securities and Exchange Commission.

13 As Your Honor may know, the SEC filed an action in
14 the U.S. District Court for the Southern District of New
15 York against both Celsius and Mr. Mashinsky alleging, among
16 other things, that the CEL token was offered and sold as a
17 security. Celsius has consented to a final judgment against
18 it in the district court, but that action has been stayed
19 pending the outcome of a criminal case against Mr.
20 Mashinsky.

21 Given what's been discussed today, I'm not sure
22 that the Court needs to rule on whether CEL is or is not a
23 security. But to the extent that Your Honor is inclined to
24 do so --

25 THE COURT: I'm not inclined to do so. Unless I

1 have to.

2 MS. SCHEUER: -- the SEC would request that such a
3 ruling be limited to the facts before the Court.

4 THE COURT: It would be.

5 MS. SCHEUER: Thank you. And not without
6 preclusive effect outside these cases.

7 THE COURT: I've already said I'm not -- as I've
8 gone through these mental gymnastics, it seemed to me I
9 didn't have to reach a result -- under some scenarios, I
10 don't have to reach a result of deciding whether it is or is
11 not a security. Okay. And at least my reading of Judge
12 Rakoff's decision and Judge Torres' decision, they differ.
13 Not that either one is necessarily the absolute answer as
14 applied to the CEL token, but nevertheless. I have great
15 respect for both Judge Rakoff and Judge Torres.

16 Let me ask you. My understanding -- and may be
17 wrong, correct me -- is that the Celsius, its agreement with
18 the SEC -- and this is one of the things I focused on -- and
19 you can tell me if I'm wrong -- Celsius did not agree as
20 part of its settlement with the SEC that the CEL token was a
21 security. Am I right or wrong about that?

22 MS. SCHEUER: Well, Your Honor, the consent is on
23 a no-deny basis. I think that the Debtors have given their
24 view of what the language in that consent means. At this
25 time, not taking a position on whether that is...

1 THE COURT: Thank you. Anything else you want to
2 say?

3 MS. SCHEUER: No thank you, Your Honor.

4 THE COURT: Thank you very much. Anybody else in
5 the courtroom want to be heard?

6 All right. I'll listen to anybody who wants to be
7 heard on Zoom.

8 MR. DAVIS: Can I go first, Your Honor? This is
9 Otis Davis.

10 THE COURT: (indiscernible), Mr. Davis.

11 MR. DAVIS: Yes. Sorry about my appearance
12 earlier. I did try to login, but I got kicked off. But for
13 the record, this is Otis Davis.

14 THE COURT: Yes.

15 MR. DAVIS: Your Honor, the burden of proof is on
16 the debtors to show that CEL token is below 81 cents after
17 the petition date. Aaron Colodny cannot answer the question
18 of what the CEL token price is on the petition date because
19 his expert (indiscernible) doesn't know the answer. The
20 answer is 81 cents --

21 THE COURT: No, it --

22 MR. DAVIS: I am sure Aaron Colodny --

23 THE COURT: Mr. Davis, the expert report hasn't
24 been admitted in evidence yet, and he's not testified. But
25 my reading of the report is that the value of the CEL token

1 on the petition date is less than 81 cents. He didn't say
2 what it was, he just said it was less than 81 cents.

3 MR. DAVIS: It's interesting that he didn't say
4 what it was. He cannot say what it was because he doesn't
5 have any evidence to prove what it was.

6 Anyway, Judge, I did file a motion at Docket
7 Number 3532. And in that motion, you will see the evidence
8 that I provided that shows why the CEL token should be at 81
9 cents. Specifically 15 million shorts being closed that
10 pushed the price back up to neutral. All the evidence --

11 THE COURT: Mr. Davis, Mr. Davis, I don't consider
12 the activity of shorts as establishing what the price for
13 bankruptcy purposes of the CEL token was on the petition
14 date. So if that's the evidence you're relying on, good
15 luck. Okay. You'll be free to cross-examine any witnesses
16 who testify about the value of the CEL token, and I ought to
17 hear evidence I suppose about the activity relating to the
18 short. But don't expect that the Court is going to rule
19 based on the short activity that the value was 81 cents.
20 The price on the petition date, if it was manipulated, does
21 not reflect the value of the CEL token on the petition date.

22 If you have a witness who is going to testify to
23 give an opinion on value, I'll certify listen to that. It
24 will be subject to any objections or anything. But if you
25 have a witness, I gave a deadline for anyone objecting to

1 confirmation to submit written testimony supporting that
2 position. And the reason I staggered whether -- you know,
3 all of the objections are important. There are fewer
4 objections than I thought we would find ourselves in this
5 position now. I thought it was important for all of those
6 who are objecting to be able to see the written direct
7 testimony of anyone testifying in support of confirmation.
8 And of course we'll have a chance during the cross-
9 examination to participate in the cross-examination of them.
10 And I staggered it so that you wouldn't actually have to
11 submit the written testimony in support until you knew what
12 it is that you were responding to. Okay. That's why the
13 separate dates for submitting evidence in support of,
14 evidence in opposition.

15 But if you have a witness who is going to testify
16 that the value of the CEL token based on the big short
17 reflects its actual value, you could put on that evidence.
18 I'll listen to it and I'll keep an open mind about it.

19 Anything else you want to add at this point? So
20 the issue is not --

21 MR. DAVIS: No, that's it.

22 THE COURT: -- getting decided today, Mr. Davis.

23 MR. DAVIS: Correct, Your Honor. It's not getting
24 decided today.

25 THE COURT: Okay. Anything else you want to add?

1 I'm happy to hear you.

2 MR. DAVIS: I think I'm done.

3 THE COURT: Okay. Does anybody else on Zoom wish
4 to be heard today?

5 MR. ABREU: Judge, Your Honor? Artur Abreu.

6 THE COURT: Yes, go ahead. Just identify yourself
7 again.

8 MR. ABREU: Yes. Pro se creditor, Artur Abreu.

9 You can call me Arthur. I just want to...

10 THE COURT: Go ahead.

11 MR. ABREU: I just want to add some points that
12 the Judge brought.

13 So I purchased CEL from (indiscernible) at five
14 dollars. You are referring to the value (indiscernible) if
15 CEL is given to those people that had CEL, they can at least
16 start (indiscernible) at their point in time, which will be
17 I suppose much more beneficial than just getting I think 17
18 cents with the recovery. The other point that you mentioned
19 is that anyone that had no voice in arguing against this
20 plan and why Celsius did business is that it was -- it makes
21 sense to have a small percentage in CEL of their holdings,
22 but never a full position. So everyone is forced to vote
23 for the plan because in most cases, their holdings on other
24 creditors are superior to the total value of CEL. So the
25 plan puts us against the world and effectually in my view

1 not equitable because some people did not have CEL, others
2 had. But all the proceedings of CEL was used in a matter
3 that had no determination or no separation of investments
4 and earnings. And you could say that some of the
5 proceedings that Celsius received from the value of CEL went
6 to pay -- so you are creating an issue that is not equitable
7 and that should be seen as well.

8 The other matter that you refer -- that there is
9 no value in CEL without Celsius. It's not entirely true
10 because the ledger itself, the coins are just a database
11 value. And you could use the total value to create another
12 project. For example, all the current CEL holders. So in
13 many crypto projects you have tokens that are equal to CEL.
14 Sometimes even the company or the initial promoter or
15 creator of this coin went to other things and part of the
16 community uses the digital, decentralized entry to then
17 distribute maybe another token at no cost for the user but
18 tries to add some value. So this is just to highlight that
19 it's not entirely true. There is no value without Celsius.
20 Celsius actually after the filing disappears. So I could
21 argue that for me, CEL currently -- if Celsius just
22 (indiscernible) the entire supply does not pass any sort of
23 security concerns.

24 My issue here is not really the price. Okay? The
25 issue is that Celsius (indiscernible) blocked the

1 withdrawals of CEL at the filing. So you could not
2 liquidate. And what was perceived by creditors varies
3 greatly in time.

4 So first, people believed that some of the
5 statements of the liquidity were correct. And I had some
6 creditors approach me telling that they were still buying
7 CEL due to the misrepresentations of the company.
8 (indiscernible). So people were actually still believing it
9 was (indiscernible) and they bought more CEL. And now they
10 are -- they bought more CEL in the app so they are now stuck
11 with an investment being made on false pretexts.

12 You also have -- the UCC I think (indiscernible)
13 at some point say highlight that Celsius still had value I
14 think around September or November, the CEL token. That all
15 I think had impact on how creditors could (indiscernible)
16 because they think, oh, they are trying to make a plan that
17 could have some value to CEL. So all of those things affect
18 this.

19 But I think it would have been simple just to know
20 how much Celsius earned from selling CEL. So how much did
21 actually creditors spend buying CEL at inflated prices.
22 Because I should (indiscernible) the 81 cents. Okay? It's
23 (indiscernible) the long and the short side of different
24 points in time. So I think it would have been simple just
25 to (indiscernible) how much CEL -- Celsius received from the

1 proceedings of selling CEL. See that value, what is the
2 average cost. And if not given a recovery, (indiscernible)
3 at least have a discrimination of the claims. Because most
4 of the claims that (indiscernible) are following seems to
5 portray to CEL itself. Yet they are giving a very well
6 recovery and are not being specific on, okay, so we are
7 going to receive a (indiscernible) for following the CEL
8 market manipulation from insiders and company itself, but we
9 are not giving that recovery to the people that got affected
10 the most by buying inflated prices of CEL from the company.
11 That's my point. If anyone wants to argue something -- I
12 read the (indiscernible) filing. It's -- there is a lot of
13 information that is taken out of context that I would like
14 to at least (indiscernible). But that's my other point.

15 Go ahead, Judge. Sorry for the delay.

16 THE COURT: All right. Thank you very much. Mr.
17 Mendelson?

18 MR. MENDELSON: Thank you, Judge. Good to see you
19 again. Erik Mendelson, pro se creditor.

20 The foundation, the building blocks as to why we
21 are in this mess is because of the CEL token. I'm a little
22 bit concerned why we've been talking so much about price for
23 the last 41 minutes and not talking about why CEL is a
24 security. So I'll give my opinion.

25 The SEC determines a security based on the Howey

1 Test, which qualifies an investment contract subjecting asset
2 as under the securities law. When investment contracts
3 exist, there is investment money in a common enterprise with
4 a reasonable expectation of profits. The four elements of
5 the Howey Test -- and I know I'm probably talking to an echo
6 chamber because all of you understand this -- is, A, an
7 investment of money. Clearly, every person that bought CEL
8 token invested their money. I don't think that can be
9 disputed.

10 Two, in a common enterprise, that common
11 enterprise is the CEL token, AKA Celsius Network.

12 Three, there was an expectation of profit. There
13 is not one person that bought CEL token with the expectation
14 of a donation or with the expectation of losing money.

15 And four, (indiscernible) the efforts of others
16 clearly as the Elementus opinion stated, Alex Mashinsky and
17 other members of Celsius executive team manipulated the
18 price of CEL token even before the sales squeeze.

19 All four elements of the Howey Test are met with
20 the CEL token. And I therefore respectfully request that
21 you rule the CEL token as a security. And I hope that your
22 ruling of CEL as a security does not affect the other
23 creditors that have already opted into the plan. That's the
24 only reason why I have been going on record about this. I
25 don't want other class members that have accepted the plan

1 to be affected by it. Unfortunately, if your ruling does
2 affect them, then so be it. But I hope that your ruling of
3 CEL as a security affects those members that feel like CEL
4 is worth more than 25 cents. And I thank you for your
5 (indiscernible).

6 THE COURT: Thank you, Mr. Mendelson.

7 Mr. Abreu?

8 MR. KOENIG: He was the gentleman that just spoke,
9 Your Honor, right before Mr. Mendelson. That was Mr. Abreu.

10 THE COURT: Oh, okay. All right. Thank you. All
11 right. Anybody else who hasn't spoken yet wish to be heard?

12 MR. IOVINE: Hi, Your Honor. This is Jason
13 Iovine, pro se creditor.

14 THE COURT: Yes, Mr. Iovine.

15 MR. IOVINE: One of the issues that I had, one is
16 that I believe CEL token should have been a separate
17 question on the ballots. It would have had I believe a
18 different outcome. We are tired and we did want to just get
19 over this. But a lot of us do believe that it is being
20 undervalued. And I would point out that there would have
21 been a big difference in the vote if it was just CEL token
22 being questioned.

23 And the other thing is with -- I don't know if
24 this is the right hearing or not, but within the plan, there
25 is no recovery in the litigation for CEL token holders.

1 They were removed from that. And this is with
2 (indiscernible) pleading guilty to manipulation. And we're
3 going to be left out of a possible fraud recovery when we
4 were hurt twice now with Celsius and CEL token. I don't
5 think that's right. And I hope Your Honor sees that and
6 changes that or instructs them to look into it. Thank you.

7 THE COURT: Thank you, Mr. Iovine. Anybody else
8 wish to be heard?

9 MR. KIRSANOV: Your Honor, Dmitry Kirsanov, pro
10 se creditor.

11 MR. KIRSANOV: I have a comment about residents of
12 Hawaii where (indiscernible) CEL token holders cannot
13 receive their CEL or any cryptocurrency token in kind
14 according to the plan and thus are entitled to cash. I have
15 attempted to reach out to Kirkland and the UCC regarding
16 this matter, but I have yet to receive a response.

17 My question is what valuation would they be
18 provided in the first 90 days of distribution. This is not
19 explained in the plan. I understand that after the 90 days,
20 it utilizes the deactivation date value. In the custody
21 settlement, there is some language that indicates the Debtor
22 is not able to satisfy in-kind, they utilize the petition
23 date values. So I'm wondering what Hawaii residents
24 actually receive. Thank you.

25 THE COURT: Thank you. That's really not relevant

1 to the issue today. But, Mr. Koenig, are you able to
2 respond at all?

3 MR. KOENIG: Good morning again. Chris Koenig.

4 Mr. Kirsanov, so what Mr. Kirsanov is referring to
5 is that in certain jurisdictions, we can't make crypto
6 distributions under securities laws. And we're obviously
7 not going to violate securities laws.

8 He has an interesting point that I frankly had not
9 considered. And I apologize if we haven't connected. If
10 you want to email me, my email is in the signature block for
11 all of the Celsius filings. It's Chris.Koenig@kirkland.com.
12 And I'm happy to speak after this.

13 His point is that the plan provides that custody
14 distributions would be made for 90 days. And then after the
15 90 days, there is a conversion table that will convert
16 crypto into fiat. I think his question is what happens in
17 the first 90 days before that conversion table is set.

18 I want to think about it more, but we should -- we
19 can certainly discuss after the hearing. It's a fair point.

20 THE COURT: You ought to try and discuss and see
21 whether there's a way of...

22 MR. KOENIG: I think there's a pretty simple
23 solution, Your Honor.

24 MR. KIRSANOV: Thank you. I appreciate it.

25 MR. KOENIG: Thank you.

1 THE COURT: Does anybody else wish to be heard.

2 MR. AMERSON: Yes, Judge. This is Jason Amerson,
3 pro se creditor.

4 THE COURT: Yes. Go ahead.

5 MR. AMERSON: So a couple quick comments if you
6 will indulge, comments and observations on just long and
7 shorting in general. I would like to point out that buying
8 and selling activity is not the only determination that
9 should be considered, Your Honor. I mean, it
10 (indiscernible) White & Case is putting on that only the
11 longing or the buying activity should be considered
12 manipulation. But price activity is a two-way street and it
13 always is. So the notion that shorting activity shouldn't
14 be considered -- should not be considered as price
15 manipulation seems to be very complex. And I would like to
16 point out that even today there is -- just this last week
17 there was a Barons article published that Tesla tops the
18 list for one of the most manipulated insurance stocks on the
19 market. Now, I know we're talking about a security and not
20 a crypto. But the same rules apply. Every price of every
21 stock in crypto is determined (indiscernible). You cannot
22 dismiss the shorting activity and only consider the longing
23 activity. And besides, not -- in and of itself, there's
24 nothing wrong with that. There's nothing illegal. There's
25 nothing amoral. It's simply people choosing to buy a

1 security or a crypto for whatever reason, which is their
2 right.

3 THE COURT: Mr. Amerson, the issue potentially for
4 the Court to have to resolve is what was the value of the
5 CEL token on the petition date. Let's say that it has to be
6 whatever the value was with all shorting activity at that
7 time, which is something I don't fully grasp. I'll listen
8 to the testimony when it comes in. So we're not going to
9 resolve that today.

10 MR. AMERSON: I understand that. I understand
11 that. But all I'm trying to say is that --

12 THE COURT: Thank you, Mr. Amerson.

13 MR. AMERSON: -- the manipulation goes on with
14 every stock in every cryptocurrency, every single day.

15 THE COURT: Okay. Does anybody else wish to be
16 heard who has not been heard already? All right. The Court
17 has another hearing in 11 minutes. So we'll adjourn this.

18 Deanna, are we using the same Zoom connection for
19 the others?

20 CLERK: It's not hybrid, so it's going to be a
21 separate login.

22 THE COURT: Fine. Okay.

23 MR. KOENIG: Your Honor, just very briefly. You
24 mentioned you want to say something about -- you mentioned
25 your order for next week and there was something you wanted

1 to say about it.

2 THE COURT: Yes, I did. Thank you. And it's one
3 of the reasons I added to the order that got entered. And I
4 inadvertently left out the U.S. Trustee who had requested an
5 opening statement. So a corrective order has been filed.

6 MR. KOENIG: Yes.

7 THE COURT: But the end of the order -- this is
8 something I wanted to talk about, how to deal with exhibits.
9 Something was brought to my attention yesterday that
10 Kirkland was, because of the volume, was putting F...

11 MR. KOENIG: FTP.

12 THE COURT: FTP address, but was requiring that
13 only people who had filed a proof of claim could get access
14 to it. Where do you get that from?

15 MR. KOENIG: We understand the point, Your Honor.

16 THE COURT: Let me make crystal clear, I don't
17 know how this is going to shake out with all the exhibits.
18 I do public trials. If there's anything that somebody
19 wishes to seal or redact, they have to make a motion. Okay.
20 I understand with a lot of exhibits, that can get
21 complicated. I, as I think you know from the beginning of
22 this case when I refused to redact a lot of information, I
23 am pretty much a stickler for public trials, public filings.
24 Everybody has access to it. So what I would ask you to do,
25 talk with Mr. Colodny and your colleagues. Come up with

1 another plan. We're not going to have a system where only
2 creditors who signed a non-disclosure agreement and who have
3 had a proof of claim are going to get access to exhibits.
4 This is a public trial.

5 MR. KOENIG: Understood.

6 THE COURT: That's what I wanted to talk about.

7 MR. KOENIG: Understood. I have two very narrow
8 points there. One is a number of our exhibits include
9 personally identifiable information that has been sealed.
10 We can redact those.

11 THE COURT: Okay. Redact.

12 MR. KOENIG: And we have a very narrow -- we will
13 file a sealing motion of -- we have -- as part of the trial
14 -- I'm sorry.

15 THE COURT: Personally identifiable information is
16 frankly a no-brainer as far as I am concerned.

17 MR. KOENIG: Right.

18 THE COURT: But redaction is the answer.

19 MR. KOENIG: Right. We will do that. And the
20 other item is as part of our case-in-chief, we value the
21 illiquid assets. The illiquid assets include litigations
22 against counterparties. If the counterparty were to see
23 where we marked that litigation, that could harm the company
24 competitively. So we will file a sealing motion for it
25 after --

1 THE COURT: You have to file a sealing motion.

2 MR. KOENIG: We will of course -- I just wanted to
3 bring it to your attention.

4 THE COURT: That was what -- I reacted when -- one
5 of my law clerks brought it to my attention that you had
6 filed something or put something that people had to -- only
7 people with proofs of claim, and they have to agree to a
8 non-disclosure agreement. That's not how we conduct trials.

9 MR. KOENIG: Understand. We will redact
10 personally-identifiable information. We will redact,
11 consistent with the sealing motion that we will file.
12 Because I just don't want the counterparty to see what we
13 marked the litigation at, which we will explain in the
14 sealing motion, Your Honor.

15 THE COURT: That's fine. I think...

16 MR. KOENIG: Okay. So we understand Monday will
17 be opening statements.

18 THE COURT: Yes.

19 MR. KOENIG: Tuesday we'll start the evidence.

20 THE COURT: Yes. Tuesday. And also -- the only
21 reason I did that is I think we'll comfortably get the
22 opening statements done on Monday. Because of the judicial
23 conference policy on access to court hearings, remote access
24 to court hearings once the evidence starts, the public and
25 the press can only be in the courthouse to hear it. I don't

1 know how many are going to show up. We'll have overflow
2 available to the extent we need it. There is video into the
3 overflow rooms. So that was one of the reasons I separated
4 out the evidence from opening statements.

5 Let me think. I don't think there's anything else
6 that I want to raise specifically about the trial.

7 Just I will alert you all I should be back here by
8 -- I teach Monday morning and then I have another
9 commitment. I should be back by exactly two or a few
10 minutes late. We'll comfortably get everything done that is
11 going to get done on Monday.

12 MR. KOENIG: Okay. The only other question I had,
13 Your Honor, is if there is a government shutdown, I see that
14 that does not affect anything. But I had to ask the
15 question.

16 THE COURT: The court remains open. We're
17 committed going -- look, the problem is not for this trial.
18 I have other things. I can't -- you know, there's a lot of
19 days set aside for this. I don't know whether we need all
20 of them. We'll see. November, I've got a 20-day trial.
21 I'm scheduling other matters for 5:00 in the afternoon
22 because I've got to keep up with a calendar. That means
23 overtime for staff.

24 The federal courts have from filing fees money
25 available to keep us going for some time, whether judges and

1 clerks and everybody gets paid or not, we'll keep going. So
2 yes, we're going forward.

3 MR. KOENIG: Okay. That's what I thought. I just
4 wanted to hear it from you. Okay. We will see you next
5 week.

6 THE COURT: We'll see you next week.

7 MR. KOENIG: Thank you, Your Honor.

8 THE COURT: Okay.

9 (Whereupon these proceedings were concluded at
10 10:55 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: September 29, 2023

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